IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

WP(C).No. 35774 of 2007(H)

PETITIONER:

SRUTHI MOHAN,
S/O.MOHAN, IIIRD YEAR B.A (FUNCTIONAL ENGLISH),
SREE KERALA VARMA COLLEGE, THRISSUR.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

RESPONDENTS:

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1. **PRINCIPAL, SREE KERALA VARMA COLLEGE, THRISSUR.**

2. **COCHIN DEVASWAM BOARD, REPRESENTED BY SECRETARY, O/O/ COCHIN DEVASWAM BOARD, THRISSUR.**

3. **THE UNIVERSITY OF CALICUT, REPRESENTED BY ITS REGISTRAR, O/O. CALICUT UNIVERSITY, KOZHIKKODE.**

4. **RETURNING OFFICER, STUDENTS UNION ELECTION, SREE KERALA VARMA COLLEGE, THRISSUR. (K.P.RADHAKRISHNAN, HEAD OF THE DEPARTMENT CHEMISTRY), SREE KERALA VARMA COLLEGE, THRISSUR.**

5. **VIJITHA, B.A, IIIRD YEAR POLITICS, SREE KERALA VARMA COLLEGE, THRISSUR.**

BY SRI.K.GOPALAKRISHNA KURUP,SC,COCHIN D.B
SRI.P.C.SASIDHARAN, SC, CALICUT UNIVERSITY
BY ADV. SRI.ASOK M.CHERIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON 14/12/2007 DELIVERED THE FOLLOWING:

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WPC.NO.35774/2007 H

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF REPORT PUBLISHED ON 01/012/07 IN MALAYALA MANORAMA DAILY.

EXT.P2: COPY OF REPORT PUBLISHED ON 01/12/07 IN KERALA KAUMUDI DAILY.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE COMPLAINT DTD. 23/11/2007 SUBMITTED BY THE SECRETARY, STUDENTS FEDERATION OF INDIA, SREE KERALA VARMA COLLEGE UNIT, SUBMITTED BEFORE THE 4TH RESPONDENT RETURNING OFFICER.

EXT.R5(B): COPY OF THE COMPLAINT SUBMITTED BY THE 5TH RESPONDENT BEFORE THE DEAN OF STUDENTS WELFARE AND CHAIRMAN, REDRESSAL GRIEVANCE CELL, ELECTION COURT OF CALICUT UNIVERSITY DTD. 5/12/2007.

EXT.R5(C): COPY OF THE COMPLAINT DTD. 30/11/2007 SUBMITTED BY THE 5TH RESPONDENT BEFORE THE DEAN OF STUDENTS WELFARE.

RESPONDENT'S ANNEXURES:

ANNEXURE I: COPY OF THE LETTER SUBMITTED BY THIS RESPONDENT BEFORE THE PRINCIPAL.

ANNEXURE II: COPY OF THE PROCEEDING OF THE PRINCIPAL DTD. 30/11/2007.

ANNEXURE III: COPY OF THE JOINT STATEMENT FILED BY THE PETITIONER AND THE AGENT OF 5TH RESPONDENT.

ANNEXURE IV: COPY OF THE COLLEGE UNION ELECTION RULES.

/TRUE COPY/

P.S.TO JUDGE

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ANTONY DOMINIC, J.

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W.P.(C) No. 35774 OF 2007 H

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Dated this the 14th December, 2007

J U D G M E N T

This writ petition concerns election to the Sree Kerala Varma College, Thrissur, of which the 1st respondent is the Principal.

2. It is stated that the petitioner was a candidate sponsored by All India Students' Federation to the post of University Union Councilor. Polling was over on 29-11-2007 and towards the two posts of University Union Councilor one person was elected without any controversy to one of the posts. To the remaining one post, there were two contestants, one was the petitioner and the other was the 5th respondent. It is stated that the petitioner as well as the 5th respondent polled 559 votes each and according to the petitioner though the University Statute requires the Returning Officer to decide the result by draw of lots, the Union sponsoring the 5th respondent demanded recounting and that was agreed by the petitioner. Accordingly the votes were recounted by the

Returning Officer and the votes polled by both candidates were again found to be 559 each.

3. It is stated that thereafter the 4th respondent and her sponsoring Union made it impossible for the Returning Officer to draw lots and the situation of the campus was such that the police had to be called in. It is stated that in view of the tense situation, the Returning Officer collected the ballot papers and went back to his chamber and did not proceed with the declaration of the results. Even after few days when results were not declared by drawing lots the petitioner filed this writ petition praying for directing the University not to pass any orders relating to the election to the post of University Union Councilor in the Sree Kerala Varma College without affording an opportunity of hearing to the petitioner.

4. The 4th and 5th respondents have filed a statement and a counter affidavit respectively. The Returning Officer would contend that on completion of the counting on 29.11.2007 the petitioner and the 5th respondent were found to have held 559 votes each. It is stated that in the recounting the votes were found to be again equal, both having polled 559 votes each. He would submit that

though it was decided to declare the results by drawing lots the 5th respondent did not agree to adopt such a course and that a section of the students interrupted with the process and he was prevented from proceeding with drawing of lots and declaration of results in a peaceful atmosphere. Accordingly, he submitted Annexure-I report to the Principal who passed Annexure-II order suspending the procedure of election awaiting directions from University authorities. Accordingly, the ballots are kept in safe custody and the procedure stands suspended. The Returning Officer has produced Annexure-IV, the Calicut Union Election Rules in terms of which, in a situation like this, according to him, final election shall be made by drawing lots by the Returning Officer.

5. The 5th respondent in her counter affidavit gives a different version. She submits that in the matter of election to the College Union, it is not the University Rules that governs the field. According to her it is order of the Apex Court in SLP No. 24295/04 wherein the Apex Court accepted the report of the Lyngdoh Committee constituted by the Ministry of Human Resource Development of India. It is stated that in terms of the aforesaid

order, the said Report is to be followed by all colleges. According to the 5th respondent, undergraduate students between the age of 17 and 22 alone are eligible to contest elections. In this case, the 5th respondent had, even before the elections, complained to the Returning Officer of the disqualification of the petitioner to contest the election as according to her, the 5th respondent was above 22 years of age. Ext. R5(a) is the complaint made by the Secretary of the Students' Federation of India and Ext. R5(b) is the complaint filed by the 5th respondent to the Dean of Students Welfare and Chairman, Grievance Redressal Cell, Election Court of Calicut University. It is also stated that in the recounting 3 votes casted in favour of the 5th respondent were treated as invalid and on that again, she had filed Ext. R5(c) complaint to the Dean, Students Welfare and Chairman, Grievance Redressal Cell of the University.

6. Standing Counsel for the 3rd respondent University supports the contention of the 5th respondent that the college is governed by the Supreme Court Order accepting the Lyngdoh Committee report and directing its implementation. It is stated that in terms of the order passed by the Supreme Court, the University

has constituted a Grievance Redressal Cell with Dean, Students Welfare as its Chairman. It is stated that the Grievance Redressal Cell has received complaints from the Principal regarding the election and that the Grievance Redressal Cell is considering the matter.

7. I have considered the submissions made by the parties. This is yet another disturbing case where the disputes within a campus in relation to the choice of a University Union Representative has taken political color and the issue has reached this Court. It is, in fact, to remove the color of the flag and for a peaceful election in the campus that the Supreme Court took upon themselves the responsibility of passing the order directing implementation of the Lyngdoh Committee report. In terms of that report, a Grievance Redressal Cell with Dean of the University is constituted. Therefore, as rightly argued by the counsel for the University, in the matter of election and in the matter of resolution of the disputes the 3rd respondent University and its colleges have to be guided by the Apex Court's order. University Rules can be relied on only in regard to issues which are not provided for in the

Report. In this case, it is in view of the provisions contained in the Apex Court order that the complaints which were made to the Principal were forwarded to the Grievance Redressal Cell and the 5th respondent also states of having made certain complaints directly to the Cell. If these complaints have reached the Grievance Redressal Cell undoubtedly the Grievance Redressal Cell has to take cognizance of the same and deal with those complaints in the manner it is ordered in the Report itself.

8. In this case, the very eligibility of the petitioner to contest the election is in dispute before the Grievance Redressal Cell. If that be so, since a decision on this dispute raised by the 5th respondent will affect the eligibility of the petitioner to contest the very election, it is necessary that the Grievance Redressal Cell renders its decision at the earliest on that issue. I take this view for the reason that in case the objection raised by the 5th respondent is upheld, then the only other candidate left in the fray seems to be the 5th respondent. At that stage, it will be upto the authorities to decide what best is to be done either to declare the 5th respondent as elected or to conduct a fresh election etc.

9. Therefore, in the fitness of things, I think, the Grievance Redressal Cell of the 3rd respondent University has to take a decision on the complaints received by it in regard to the election to the post of University Union Representative. Once such a decision is taken and if the decision is favourable to the petitioner, necessarily therefore the dispute between the petitioner and the 5th respondent will have to be resolved. There is no provision in the Lyngdoh Committee report to deal with a situation where two candidates have drawn equal votes. If that be so, I see no reason why the college should not follow the guideline issued by the University which provides for draw of lots.

10. Therefore, I dispose of this writ petition directing that the Grievance Redressal Cell of the University shall consider and take a final decision on the complaints received in regard to the election in the Sree Kerala Varma College. This shall be done with notice to petitioner and as expeditiously as possible, at any rate, within two weeks of receipt of a copy of this judgment. Once such decision is taken and if that decision upholds the eligibility of the petitioner to contest the election then the 4th respondent Returning Officer shall

proceed to draw lots and declare the results. This shall be done without any further delay in the matter.

11. Needless to say, if the Principal or the 4th respondent feels that any security arrangements are necessary to be made in the college for maintaining peace and order it will be open to the Principal or the 4th respondent to take such assistance as is necessary from the Superintendent of Police, Thrissur who shall, if so required, provide necessary assistance without fail.

The writ petition is disposed of as above.

ANTONY DOMINIC
JUDGE

jan/-